



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 25, 2004

Mr. J. David Dodd, III
Nichols, Jackson, Dillard, Hager & Smith, L.L.P.
500 North Akard, Suite 1800
Dallas, Texas 75201

OR2004-5227

Dear Mr. Dodd:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 204129.

The Richardson Police Department (the "department"), which you represent, received a request for information concerning the investigation of a complaint against an officer of the department, and for information concerning a complaint filed against the requestor with the State Bar of Texas (the "State Bar"). You claim that the requested information is excepted from disclosure under sections 552.101 and 552.103 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information. We have also considered comments submitted by the requestor. *See* Gov't Code § 552.304 (providing that member of public may submit comments stating why information should or should not be released).

We begin by noting that the submitted information is subject to required public disclosure under section 552.022 of the Government Code, which provides in relevant part:

the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

- (1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108[.]

Gov't Code § 552.022(a)(1). The submitted information is a completed investigation made by the Professional Standards Division of the Richardson Police Department. As prescribed by section 552.022, the department must release this completed investigation unless it is confidential under other law. Section 552.103 of the Government Code is a discretionary exception to disclosure that protects the governmental body's interests and is therefore not other law that makes information expressly confidential for purposes of section 552.022(a). *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); *see also* Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). Consequently, the department may not withhold the submitted information pursuant to section 552.103 of the Government Code. As you contend that the information is confidential by law, however, we will address your claim under section 552.101.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision," and encompasses information made confidential by other statutes. You contend that the submitted information is excepted from disclosure under section 552.101 because "[c]omplaints filed with the State Bar are confidential." We understand you to assert that the submitted information is confidential under Rule 2.15 of the Texas Rules of Disciplinary Procedure, which provides that certain records of a grievance committee of the State Bar are confidential.¹ TEX. R. DISCIPLINARY P. 2.15, *reprinted in* Gov't Code tit. 2, subtit. G app. A-1. Section 81.033(a) of the Government Code provides that records of the State Bar pertaining to grievances that are confidential under the Texas Rules of Disciplinary Procedure are not subject to the Public Information Act. *See* Gov't Code § 81.033(a). We note that Rule 2.15 and section 81.033(a) apply to records of the State Bar. Gov't Code § 81.033(a); TEX. R. DISCIPLINARY P. 2.15. The submitted information consists of records of the Richardson Police Department. We find that the Rule 2.15 and section 81.033(a) are not applicable to the submitted information in the hands of the department. We therefore determine that the submitted information is not confidential pursuant to Rule 2.15 and may not be withheld under section 552.101 of the Government Code on that basis.

We note that the submitted documents contains information that is excepted under section 552.117(a)(2) of the Government Code. Section 552.117(a)(2) excepts from disclosure the home address, home telephone number, social security number, and the family member information of a peace officer as defined by article 2.12 of the Code of Criminal Procedure. *See* Open Records Decision No. 622 (1994). We have marked the information in the submitted investigation report that the department must withhold under section 552.117(a)(2). The remainder of the submitted information must be released to the requestor.

¹ We note that the rules of the state bar have the same effect as statutes. *See Board of Law Examiners v. Stevens*, 868 S.W.2d 773 (Tex. 1994).

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within thirty calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within ten calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within ten calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within ten calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Tex. Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't

Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within ten calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read 'D. Saldivar', with a long horizontal flourish extending to the right.

David R. Saldivar
Assistant Attorney General
Open Records Division

DRS/seg

Ref: ID# 204129

Enc: Submitted documents

c: Mr. Sy S. Shamsie
Shamsie & Associates
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(w/o enclosures)